

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MARK J. GOSSETT,

Petitioner,

V.

SCOTT SPEER,

Respondent.

CASE NO. 3:24-cv-06039-BJR

ORDER ADOPTING REPORT AND RECOMMENDATION

I. INTRODUCTION

Currently before the Court is the Report and Recommendation of Michelle L. Peterson, United States Magistrate Judge, which recommends that this Court dismiss Petitioner's petition for writ of habeas corpus as an unauthorized second or successive petition. Dkt. No. 4. Petitioner filed objections to the Report and Recommendation. Dkt. Nos. 6 and 9. Having reviewed the Report and Recommendation, the objections thereto, the record of the case, and the relevant legal authority, the Court will adopt the Report and Recommendation and dismiss the petition. The reasoning for the Court's decision follows.

II. DISCUSSION

Petitioner Mark Gossett is a state prisoner who currently resides at the Stafford Creek Corrections Center in Aberdeen, Washington. He filed the instant petition for writ of habeas corpus under 28 U.S.C. § 2241 challenging his confinement pursuant to a 2010 judgment and sentence in Thurston County Superior Court. Petitioner asserts that his current custody is unlawful because he was denied counsel during his arraignment in Thurston County Superior Court, nor did he waive his right to counsel. Petitioner alleges that this constitutes a violation of his rights under the Sixth and Fourteenth Amendments of the United States Constitution.

The Ninth Circuit has held that “28 U.S.C. § 2254 is the exclusive vehicle for a habeas petition by a state prisoner in custody pursuant to a state court judgment[.]” *White v. Lambert*, 370 F.3d 1002, 1009-10 (9th Cir. 2004), *overruled on other grounds by Hayward v. Marshall*, 603 F.3d 546 (9th Cir. 2010) (en banc). Petitioner’s petition for writ of habeas corpus is therefore properly construed as one brought pursuant to § 2254. A review of this Court’s records reveals that Petitioner filed a federal habeas petition challenging the same 2010 Thurston County Superior Court judgment and sentence in July 2015. *See Gossett v. Glebe*, C15-5515-BHS, Dkt. No. 1. That petition was dismissed on the merits on January 20, 2016. *Id.*, Dkt. No.19. Since the beginning of 2024, Petitioner has filed five additional habeas petitions challenging the same 2010 Thurston County judgment and sentence. Each of Petitioner’s preceding four petitions was dismissed as successive. *See Gossett v. Bennett*, C24-5130-DGE; *Gossett v. Bennett*, C24-5408-RAJ; *Gossett v. Bennett*, C24-5433-JNW; *Gossett v. Bennett*, C24-5501-TMC.

Because Petitioner had a previous federal habeas petition challenging the judgment at issue here dismissed on the merits, the instant petition is successive for purposes of 28 U.S.C. § 2244(b). *See* 28 U.S.C. § 2244(a). This Court is without jurisdiction to consider a successive

1 petition until the Ninth Circuit Court of Appeals has authorized its filing. *See* 28 U.S.C. §
2 2244(b)(3)(A). Petitioner provides no evidence that the Ninth Circuit has authorized the filing of
3 the instant petition. Accordingly, this Court lacks jurisdiction over the petition.

4 Petitioner filed objections to the Report and Recommendation on January 9, 2025, and
5 filed additional objections on January 22, 2025. *See* Dkt. Nos. 6 and 9. In total, he raises thirteen
6 objections to the Report and Recommendation, none of which addresses the basis on which the
7 Report recommends that the petition be dismissed: that it is a successive petition. Instead,
8 Petitioner raises nonsensical, inapplicable, unsupported, and/or frivolous objections, none of
9 which trigger the *de novo* review requirement. *See, e.g., Kenniston v. McDonald*, 2019 WL
10 2579965, *8 (S.D. Cal. June 24, 2019) (“Frivolous, conclusive or general objections need not be
11 considered by the district court.”); *Muegge v. Aqua Hotels and Resorts, Inc.*, 2015 WL 4041313,
12 *2 (D. Hawai’i June 30, 2015) (same); *United States v. Rudisill*, 2006 WL 3147663, at *1 (D.
13 Ariz. Nov. 1, 2006) (objection to report and recommendation without analysis is insufficient to
14 trigger review). Accordingly, the Court concludes that the instant petition must be dismissed as
15 successive.

16 III. CONCLUSION

17 For the foregoing reasons, the Court HEREBY ORDERS:

18 (1) The Report and Recommendation is approved and adopted;

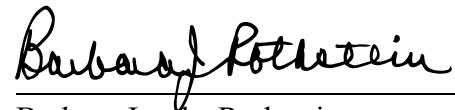
19 (2) The petition for writ of habeas corpus and this action are DISMISSED

20 pursuant to 28 U.S.C. § 2244(a), as the petition constitutes an unauthorized second or successive
21 petition and this Court therefore lacks jurisdiction to consider it;

22 (3) In accordance with Rule 11 of the Rules Governing 2254 Cases in the United States
23 District Courts, a certificate of appealability is DENIED;

1 (4) Petitioner's application to proceed *in forma pauperis* (Dkt. No. 1), and all motions
2 submitted by Petitioner in conjunction with this petition are DENIED as moot; and
3 (5) The Clerk is respectfully directed to send copies of this Order to Petitioner and to the
4 Honorable Michelle L. Peterson.

5 Dated this 10th day of March 2025.

6
7 
8 Barbara Jacobs Rothstein
9 U.S. District Court Judge